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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 3(n)
and 332 of the Communications Act

Regulatory Treatment of Mobile
Services

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GN Docket No. 93-252

GTE OPPOSITION TO PETITIONS FOR RECONSIDERATION

GTE Service Corporation and its affiliated GTE
domestic telephone, service and equipment
companies

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SUMMARY

The cellular reseller Petitioners' arguments that the Commission should already have imposed interconnection obligations on facilities-based cellular carriers in this proceeding instead of deferring action to a separate proceeding are without merit: (1) despite the resellers' claims, CMRS providers do not have control over bottleneck facilities; (2) the Budget Act and revised Section 332 do not require the Commission to adopt interconnection specifications by August 10, 1994; (3) the resellers' fears that the interconnection proceeding will be unduly delayed are baseless, especially since the Commission has now acted to initiate a notice of inquiry to examine, inter alia, precisely the concerns raised by the resellers; and (4) the complexity of the issues involved warrants careful review and comment by all affected parties and measured consideration by the Commission.

NCRA's and MCI's objections to the Commission's exercise of its forbearance authority are equally without merit. The petitioning parties provide no support for their claims, other than their own self-interested views. The record in this proceeding fully supports the action taken by the Commission. The Second Report and Order reflects a proper consideration of the factors enumerated in the Budget Act in support of the Commission's forbearance authority.

The Petitioners have in no way justified the relief they seek in their petitions for reconsideration. The petitions, accordingly, should be denied.

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GTE OPPOSITION TO PETITIONS FOR RECONSIDERATION

GTE Service Corporation ("GTE"), on behalf of GTE's affiliated domestic telephone, equipment, and service companies, hereby opposes certain of the petitions for reconsideration filed with respect to the Second Report and Order in the above-captioned docket.¹ Specifically, GTE opposes the petitions for reconsideration filed by the National Cellular Resellers Association ("NCRA"), Cellular Service, Inc. ("CSI") and ComTech, Inc. ("ComTech")² (jointly, "CSI/ComTech"), and MCI Telecommunications Corporation ("MCI"). For the reasons stated herein, the relief requested by these petitioners should be denied.

¹ Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994) [hereinafter "Second Report and Order"]. Public Notice of the Second Report and Order was given at 59 Fed. Reg. 18493 (Apr. 19, 1994). Petitions for reconsideration were filed on May 19, 1994, and public notice of the filing of the petitions was given at 59 Fed. Reg. 28386 (June 1, 1994).

² CSI and ComTech identify themselves as resellers of cellular service.

I. THE COMMISSION PROPERLY DECIDED TO CONSIDER RESELLER INTERCONNECTION ISSUES IN A FURTHER PROCEEDING

NCRA and CSI/ComTech contend that the Commission violated Section 332 by not immediately giving cellular resellers an unqualified right to interconnect with cellular mobile telephone switching offices ("MTSOs").³ Both petitioners claim that cellular carriers control bottleneck facilities and that the Budget Act⁴ compels the Commission to mandate such interconnection by August 10, 1994. They also assert that it will take "years" to develop interconnection policies in a further proceeding.⁵ These arguments are entirely without merit.

First of all, as the Commission correctly explained in the Second Report and Order, analysis of the interconnection issue "must acknowledge that CMRS providers do not have control over bottleneck facilities."⁶ No CMRS provider, including cellular carriers, enjoys anything near the type of market power that the Commission has found in the past to justify imposing specific interconnection obligations. In the mobile communications market, cellular carriers already are subject to robust competition.⁷ Moreover, with the recent adoption of the Broadband PCS Reconsideration Order, the Commission has assured prompt introduction of additional sources of competition.

³ See Petition of NCRA at 1-11; Petition of CSI/ComTech.

⁴ See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993) ("Budget Act").

⁵ CSI/ComTech at 14.

⁶ Second Report and Order, 9 FCC Rcd at 1499.

⁷ NCRA's argument to the contrary relies on the thoroughly discredited Pitsch study and related analyses of the mobile services marketplace, see NCRA Petition at 4. As explained by numerous commenters in the proceeding concerning CTIA's petition to declare that cellular carriers are non-dominant, the Pitsch study and NCRA's other arguments regarding market power rest on untenable assumptions and suffer from several fatal analytical flaws. See, e.g., Reply Comments of McCaw, RM-8179, filed April 5, 1993, at 4-5; Reply Comments of CTIA, RM-8179, filed April 5, 1993, at 18-25; Reply Comments of Southwestern Bell, RM-8179, filed Apr. 15, 1993, at 3-7.

Second, the resellers are wrong in contending that Section 332 compels adoption of an interconnection requirement by August 10. The plain language of the statute and its legislative history indicate that the one-year deadline applies only to rules implementing the regulatory parity directive.⁸ The Conference Report clearly states that the August 10, 1994 deadline relates to the transition of private carriers to CMRS regulations and does not compel adoption of interconnection-related rules (if any ultimately prove warranted) within the one-year deadline.

Third, there is no basis for expecting the interconnection proceeding to take years to resolve. At its June 9 open meeting, the Commission adopted a Notice of Inquiry to examine CMRS interconnection issues, thereby alleviating any concern that the proceeding might not be commenced in a timely fashion. Moreover, the Commission has proceeded with commendable alacrity in discharging its considerable obligations under revised Section 332. The resellers' prediction that the

⁸ As pointed out by NCRA, Section 6002(d)(3)(C) of the Budget Act does direct the Commission to issue, within one year, "such other regulations as are necessary to implement the amendments made by subsection (b)(2)." This provision must be read, however, in light of the title of Section 6002(d), Transitional Rulemaking for Mobile Service Providers. The transition refers to the re-classification of some private carriers as CMRS providers, as is confirmed by the Conference Report:

[T]he House bill directs the Commission, within 1 year after enactment, to alter its rules regarding private land mobile services to provide for an orderly transition of these services to regulation as common carrier services.

....

The Conference Agreement adopts the house language concerning the transitional rulemaking for mobile services with slight modifications to clarify that the rules are intended to ensure that services that were formerly private ... and become common carrier services as a result of this Act are subjected to technical requirements that are comparable to the technical requirements that apply to similar common carrier services.

interconnection proceeding will be consigned to regulatory limbo underestimates the Commission's dedication to finalizing the rules governing the future mobile marketplace as rapidly as possible, consistent with reasoned decision-making.

Finally, the Commission appropriately has noted that the interconnection issue is complex and controversial. Contrary to the resellers' assurances, interconnection of reseller switches with cellular MTSOs would raise difficult economic, policy, legal, and technical issues. For example, the resellers' requests necessitate a careful analysis of whether legal precedent can support mandatory interconnection where carriers lack monopoly power, whether interconnection would provide benefits to the public, what type of interconnection might be reasonable, whether interconnection would impose significant costs on cellular carriers (and if so, how those costs should be recovered), whether any unbundling of service offerings is warranted,⁹ and whether blanket interconnection rights might jeopardize network reliability or constrain the ability of cellular carriers to upgrade their MTSOs.

Against this background, the Commission has properly exercised its discretion to decide how to manage its docket by electing to consider CMRS interconnection-related matters in a further, focused proceeding. The alternative sought by the resellers — a hasty, ill-considered, and sweeping order — is unsupported by the record and plainly inconsistent with sound administrative processes. Consequently, their petitions should be summarily denied.

⁹ See NCRA Petition at 10-11.

II. THE COMMISSION PROPERLY ADOPTED FORBEARANCE FROM TITLE II TARIFF FILING AND CONTRACT FILING REQUIREMENTS

MCI and NCRA both challenge the forbearance applied by the Commission to various Title II obligations otherwise imposed on CMRS operators. MCI seeks the following relief:

- Vacating the Commission's decision "to forbear from requiring or permitting CMRS providers to file tariffs for services provided to their customers;"¹⁰
- Vacating the Commission's decision to "temporarily forbear from requiring or permitting CMRS providers to file tariffs for interstate access service."¹¹
- Revisiting its decision "to forbear from requiring the filing of intercarrier contracts . . . , particularly those governing the exchange of traffic between dominant carriers and their CMRS affiliates."¹²

NCRA argues that "[t]he Commission's decision to forbear from requiring cellular tariff filings satisfies none of the three tests and is therefore both improper and premature."¹³ As detailed below, these arguments for relief have no sound basis and must be rejected.

The petitioners and the Commission are in agreement with respect to the standard to be applied in deciding on the proper exercise of the forbearance authority granted by the Budget Act. Specifically, the Commission must base its conclusion on findings that:

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory; (ii) enforcement of such provision is not

¹⁰ MCI Petition at 3.

¹¹ MCI Petition, quoting Second Report and Order, 9 FCC Rcd at 1480.

¹² MCI Petition at 13.

¹³ NCRA Petition at ii.

necessary for the protection of consumers; and (iii) specifying such provision is consistent with the public interest.¹⁴

MCI and NCRA, however, disagree with the Commission's application of this test to the tariffing of either cellular services in particular or CMRS operations in general.

The action taken by the Commission with respect to CMRS tariffing forbearance was fully explained in the Second Report and Order and well-supported by the record before the Commission. To challenge the action taken by the Commission, MCI and NCRA must resort to picking apart the decision piece by piece and attempting to apply legal standards that are not relevant. These Petitioners' arguments reflect their own self-interested agendas rather than any public interest purposes.

Whatever the validity of the Commission's conclusion that the cellular market is not "fully competitive,"¹⁵ the Commission found that sufficient competition exists to support a finding that forbearance is consistent with the statutory standards. Despite the unsupported allegations of MCI and NCRA, nowhere does the Budget Act require a finding of "full" competition to justify forbearance action on the part of the Commission.

Similarly, both NCRA and MCI attempt to apply a layer of regulatory analysis to the Commission's review that is nowhere required and indeed is now irrelevant in light of the Budget Act provisions. Specifically, both petitioners continue to rely upon the Commission's "dominant" and "non-dominant" dichotomy, concluding that, because cellular carriers have not yet been found to be non-dominant, forbearance is not appropriate. But, as the petitioners themselves have pointed out, that is not the test embodied in the Budget Act. The statute instead specifies the three factors to be considered by the Commission.

NCRA argues that the Commission has improperly engaged in a balancing test by, among other things, considering the effect of tariffing requirements on the staff's

¹⁴ Budget Act § 6002(b)(2)(A) (to be codified at 47 U.S.C. § 332 (c)(1)(A)).

¹⁵ Second Report and Order, 9 FCC Rcd at 1467.

own workload. NCRA's argument appears to ignore the fact that one of the prongs of the Budget Act test includes an analysis of the "public interest" associated with a forbearance decision. The scope of such analysis necessarily is broad, and can include such factors as the effect upon the efficacy of the Commission's monitoring of tariff filings, in light of its other obligations.

MCI argues that CMRS licensees should still be required to file access tariffs. In light of its plan to launch a proceeding to review the equal access obligations to be imposed on cellular and other CMRS operators, as well as their interconnection obligations, forbearance is the most reasonable, legally justified course of action to be taken by the Commission.¹⁶ MCI's arguments simply do not overcome the record support for the conclusion reached by the Commission.

MCI also claims, in a single paragraph, that CMRS licenses should still be required to file intercarrier contracts.¹⁷ Other than its own preferences, MCI offers no legal support — and no analysis under the standards set forth in the Budget Act — for retaining an intercarrier agreement filing requirement. In the absence of any justification for the requested relief, MCI's plea must be rejected.

In sum, while MCI and NCRA find a number of ways in which to quibble with the action taken by the Commission, they are unable to cite to anything in the statute or elsewhere that demonstrates that the actions taken in the Second Report and Order analysis are inconsistent with the Budget Act or other statutory requirements. Their quibbling does not render the Commission's action invalid or in need of reversal.

¹⁶ This proceeding was initiated at the Commission's open meeting on June 9, 1994.

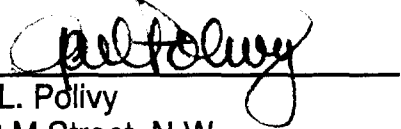
¹⁷ MCI Petition at 13.

III. CONCLUSION

NCRA, CSI/ComTech, and MCI all seek Commission reconsideration of important elements of the Second Report and Order in this docket. Notwithstanding their claims, the relief sought in their petitions is not justified and should not be granted. Specifically, the Commission properly concluded that interconnection policies to be imposed on CMRS carriers should not be resolved at this time but instead should be taken up in a separate proceeding, which was initiated on June 9. The Commission also properly exercised its forbearance authority to decline to require or permit the filing of cellular and CMRS tariffs and intercarrier agreements. Thus, the NCRA, CSI/ComTech, and MCI petitions must all be promptly denied.

Respectfully submitted,

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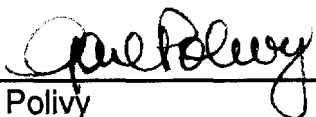
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 1994, I caused copies of the foregoing "GTE Opposition to Petitions for Reconsideration" to be mailed via first-class postage prepaid mail to the following:

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